

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

SKY TIPTON,	:	
	:	
Plaintiff	:	
	:	
v.	:	Case No. 3:24-cv-126-KAP
SUPERINTENDENT SCOTT	:	
KLINEFELTER, S.C.I. HOUTZDALE, <i>et al.</i> ,	:	
Defendants	:	

Memorandum Order

Plaintiff Sky Tipton filed a complaint at ECF no. 4 subject to the Prison Litigation Reform Act. I screened it before service and recommended that it be dismissed in part for failure to state a claim without leave to amend, and the part not dismissed should be served on two defendants. ECF no. 11. My use of the Report and Recommendation process was due to Burton v. Schamp, 25 F.4th 198 (3d Cir. 2022)(holding that consent jurisdiction under 28 U.S.C. § 636(b)(1)(C) requires the consent of the parties that judgment would be entered for, so where not all parties have filed consents a Magistrate Judge should proceed by Report and Recommendation to the District Court, which has Article III authority to dismiss parties and enter final judgment in the matter in favor of parties who have not filed a consent.)

After service of the defendants named in my recommendation, all parties eventually returned consents. As a result, I now adopt my former recommendation as my order: all the claims and defendants named in the complaint are dismissed from this action except for the two already identified: plaintiff's claim of excessive use of force against Daniel Williams under Whitley v. Albers, 475 U.S. 312 (1986), and plaintiff's failure to intervene claim against Lieutenant Diehl under Smith v. Mensinger, 293 F.3d 641, 650-51 (3d Cir.2002).

As to those two claims, the discovery schedule is as follows:

1. Defendants' motion to extend time to file an answer, ECF no. 22, is granted to April 30, 2025.
2. Discovery shall be completed by July 31, 2025. Discovery motions should only be filed after attempts to resolve the matter between the parties have failed, shall briefly state the matter in dispute without need of a supporting memorandum of law, and shall be responded to within five days. Unless otherwise ordered the filing of discovery motions does not extend the discovery period. Defendants are given leave to take plaintiff's deposition and those of other inmates without need of further motion under Fed.R.Civ. P. 30(a)(2)(B).

3. Motions for summary judgment shall be filed on or before August 31, 2025. Responses to motions for summary judgment are due on or before September 30, 2025.
4. If no summary judgment motions are filed, the pretrial statement of plaintiff shall be filed on or before September 30, 2025, and the pretrial statement of defendants shall be filed on or before October 31, 2025.



DATE: April 10, 2025

Keith A. Pesto,
United States Magistrate Judge

Notice by U.S. Mail to:

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